

NEBRASKA ADMINISTRATIVE CODE

Last Issue Date: April 7, 1999

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 15 - INFORMATION REQUIREMENTS FOR THE SECTION 8-1111(9) NOTICE

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120(3) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule relating to Section 8-1111(9) is consistent with investor protection and is in the public interest.

001.03 The Director may, on a case-by-case basis, and with prior written notice to the affected persons, require adherence to additional standards or policies, as deemed necessary in the public interest.

001.04 The definitions in 48 NAC 2 shall apply to the provisions of this Rule, unless otherwise specified.

002 NOTICE FILING REQUIREMENT. The notice required by Section 8-1111(9)(a) of the Act will be satisfied if the conditions of this Rule are met.

002.01 Such notice shall be filed with the Nebraska Department of Banking and Finance, P.O. Box 95006, Lincoln, Nebraska 68509.

002.02 Such notice shall be filed within thirty (30) days of the first sale made in reliance on this exemption.

003 CONTENTS OF NOTICE. The notice filed by a seller pursuant to Section 8-1111(9)(a) shall include the following information:

003.01 The name and address of the issuer and the name and address of the seller, if other than the issuer;

003.02 The name and address of the broker-dealer representing the seller in promoting the offering or, if there is no broker-dealer representing the seller, the name and address of any officer, director, manager, member or other person representing the seller in promoting the offering;

003.03 The business in which the issuer is to be engaged;

003.04 The type of security being issued (common stock, limited partnership interests, debentures, etc.);

003.05 The total dollar amount of such securities sold as of the date of the filing, whether in Nebraska or elsewhere;

003.06 The dollar amount to be offered during the 12-month period following the filing, whether in Nebraska or elsewhere;

003.07 The date of the first sale made in reliance on this exemption; and

003.08 A representation that all of the conditions of Section 8-1111(9) of the Act have been or will be met.

004 ADDITIONAL FILINGS. An issuer which meets the requirements set forth below shall file audited financial statements and a sales report with the Director.

004.01 An issuer is required to make such filing after the issuer has made

004.01A Sales pursuant to Section 8-1111(9)(a) for five (5) consecutive twelve (12)-month periods; or

004.01B Total sales of one million dollars from one or more offerings pursuant to Section 8-1111(9)(a).

004.01B1 In determining the total amount of sales for purposes of determining the necessity of complying with this provision, the issuer shall include sales to persons excluded from the fifteen (15)-person limitation under Section 8-1111(9)(a).

004.01B2 In determining the total amount of sales for purposes of determining the necessity of complying with this provision, the issuer shall include all sales of securities, regardless of the location of the purchaser or the location where the transaction occurred.

004.02 The required information shall be filed no later than ninety (90) days after (a) the date on which the issuer files the fifth consecutive annual notice claiming exemption pursuant to Section 8-1111(9)(a) or (b) the date on which the issuer's total sales of the securities exceeds one million dollars.

004.03 The financial statements shall include a balance sheet, an income statement, and a cash flow statement and must be:

004.03A Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

004.03B Audited by an independent certified public accountant;

004.03C Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity; and

004.03D Prepared as of the end of the issuer's most recent fiscal year.

004.04 The sales report shall include:

004.04A The name and address of all purchasers and holders of the issuer's securities, the amount of securities held by such persons, and the dates on which purchases were made; and

004.04B A statement indicating whether each purchaser or holder of a security is an accredited investor and whether the status as an accredited investor is based on net worth or net income.

004.05 An issuer shall file audited financial statements and sales reports with the Director each time that the issuer sells an additional one million dollars in securities or after the elapse of each additional sixty-month period during which sales are made pursuant to Section 8-1111(9).

004.06 The filing set forth in this subsection shall be deemed to be a condition of the exemption for any issuer who meets the requirements contained in 004.01 above. Failure to make a required filing will result in the loss of the exemption. Sales made in reliance during the time when an issuer is not in compliance with these filing requirements will be considered to violate Section 8-1104 of the Act.

004.07 The Department may grant a request for an extension of the ninety-day period for the filing of financial statements, upon the timely filing of such a request by an issuer, based on the need for additional time to prepare the audit.

005 DISCLOSURE. Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, sellers or persons acting on behalf of sellers from providing to prospective investors disclosure adequate to satisfy the provisions of Section 8-1102 of the Act.

006 INVESTMENT INTENT. The seller must have reasonable belief that the securities purchased are taken for investment. Investment intent may be manifested by, but is not

limited to, a restriction which shall be stated on the face of the security that it shall be held by the purchaser until the earlier of the date the issuer of the securities becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 or one year from the date of purchase.

007 EFFECTIVENESS. A notice of exemption filed pursuant to Section 8-1111(9)(a) of the Act shall remain effective until the earlier of the following events:

007.01 Sales to fifteen (15) persons, other than persons designated in Section 8-1111(8), (11) and (17) of the Act, have been effected; or

007.02 One year from the date of the first sale.

008 AVAILABILITY OF EXEMPTION.

008.01 Offers and sales which are exempt under this rule may not be combined with offers and sales exempt under any other Rule or Section of the Act, except as specifically allowed in Section 8-1111(9) of the Act; however, nothing in this limitation shall act as an election. Should, for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the seller may claim the availability of any other applicable exemption.

008.02 This exemption is not available to any seller with respect to any transaction which, although in technical compliance with this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule.

009 CURE ORDERS. If the notice required by Section 8-1111(9)(a) of the Act and this Rule is not filed within thirty (30) days of the first sale made in reliance on this exemption, the seller shall file the information required by 48 NAC 19.

010 BURDEN OF PROOF. In any proceeding involving this Rule, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.